

§ 79.32

for any Indian Tribe at any time between January 1, 1947 and December 31, 1971.

(o) *Designated time period* means any time during the period beginning on January 1, 1947, and ending on December 31, 1971.

(p) *Specified States* means the states of Arizona, Colorado, New Mexico, Utah and Wyoming.

(q) *Readily available documentation* means documents in the possession, custody or control of the claimant or an immediate family member.

(r) *Certified "B" reader* means a physician who has demonstrated proficiency in evaluating chest roentgenograms (x-rays) for quality and for the presence of pneumoconiosis and other roentgenographic abnormalities and is certified (and recertified, as may be appropriate) by the National Institute for Occupational Safety and Health. A list of certified "B" readers is available from the Radiation Exposure Compensation Unit upon request.

§ 79.32 Criteria for eligibility.

To establish eligibility for compensation under this subpart, a claimant or eligible surviving beneficiary must show by a preponderance of the evidence that each of the following criteria are satisfied:

(a) The claimant was employed in a uranium mine or mines in the states of Arizona, Colorado, New Mexico, Wyoming or Utah;

(b) The Claimant was so employed during the period beginning on January 1, 1947 and ending on December 31, 1971;

(c) The claimant contracted primary lung cancer or a non-malignant respiratory disease, and

(1) If a non-smoker, the claimant was exposed during the course of his/her employment in a uranium mine to more than 200 working level months of radiation, or

(2) If a smoker, then

(i) If the incidence of the cancer or the non-malignant respiratory disease occurred before the age of 45, the claimant was exposed during the course of his/her employment in a uranium mine to more than 300 working level months of radiation; or

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(ii) If the incidence of the cancer or the non-malignant respiratory disease occurred after the age of 45, the claimant was exposed during the course of his/her employment in a uranium mine to more than 500 working level months of radiation.

§ 79.33 Proof of employment in a uranium mine.

(a) Information regarding a claimant's uranium mining employment history contained in records held by any of the sources listed in this subsection will be accepted as proof of employment for the time period indicated on the records. The employment history for the time period indicated in the records is presumed to be correct. If the claimant or eligible surviving beneficiary contests the accuracy of the records specified in this subsection, then the claimant or eligible surviving beneficiary may provide one or more of the records identified in paragraph (b) of this section, and the Assistant Director will determine whether there is a preponderance of the evidence that the employment history from the records in this subsection is incorrect.

(1) Records created by or gathered by the Public Health Service (PHS) in the course of any health studies conducted of uranium miners during or including the period 1947-1971;

(2) Records of a uranium miner census performed by the PHS at various times during the period 1947-1971;

(3) Records of the Atomic Energy Commission (AEC), or any of its successor agencies; and

(4) Records of federally-supported health-related studies of uranium miners including;

(i) Studies conducted by Dr. Geno Saccamanno, M.D., St. Mary's Hospital, Grand Junction, Colorado;

(ii) Studies conducted by Dr. Jonathan Samet, M.D., University of New Mexico School of Medicine.

(b) If the sources in paragraph (a) of this section do not contain information on the claimant's uranium mining employment history, or contain insufficient employment history information to establish exposure to the number of working level months required for the claimant to qualify under the appropriate provision of § 79.32(c), a claimant

or eligible surviving beneficiary may submit records from any of the sources listed in paragraph (b)(1) of this section to establish periods of uranium mining employment in addition to the periods of employment established by the sources in paragraph (a) of this section.

(1) The claimant or eligible surviving beneficiary may submit:

(i) Records of any of the specified states, including records of state regulatory agencies, containing information on uranium miners and uranium mines;

(ii) Records of any business entity that owned or operated a uranium mine, or its successor-in-interest;

(iii) Records of the Social Security Administration reflecting the identity of the employer, the year and quarter of employment, and the wages received during each quarter;

(iv) Federal or state income tax records that contain appropriate statements regarding the claimant's employer and wages;

(v) Records containing factual findings by any governmental judicial body, state workers compensation board, or any governmental administrative body adjudicating the claimant's rights to any type of benefits; records from any such source will be accepted only to prove the fact of and duration of employment in a uranium mine;

(vi) Statements in medical records created between 1947 and 1971 indicating or identifying the claimant's employer and occupation;

(vii) Records of an academic or scholarly study, not conducted in anticipation of or in connection with any litigation, and completed prior to 1990; or

(viii) Any other contemporaneous record that indicates or identifies the claimant's occupation or employer.

(2) To the extent that the documents submitted from the sources identified in paragraph (b)(1) of this section do not so indicate, the claimant or eligible surviving beneficiary must set forth under oath on the standard claim form the following information, if known:

(i) The name or other identifying symbol of each mine in which the claimant worked during the time period identified in the documents;

(ii) The mining district, county and state in which each mine was located;

(iii) The actual time period he/she worked in each mine; and

(iv) The claimant's occupation in each mine.

(3) If records of the Unit indicate that any mine specified by the claimant or eligible surviving beneficiary was not an underground uranium mine, the claimant or eligible surviving beneficiary will be notified and afforded the opportunity to submit records to establish that the mine was an underground mine in accordance with § 79.52(c).

(4) If the claimant or eligible surviving beneficiary cannot provide under paragraph (b)(2) of this section, the name or location of any uranium mine at which the claimant was employed, then, if possible, this information will be determined by utilizing records reflecting the types of mines operated or owned by the entity for whom the claimant worked.

(i) If such records establish that the business for which the claimant worked owned or operated *only* underground uranium mines during the time period indicated in the records, the claimant will be presumed to have been employed in an underground uranium mine for the indicated time period;

(ii) If such records establish that the entity for which the claimant worked owned or operated predominantly underground uranium mines in the state and during the time period indicated in the records, the claimant will be presumed to have been employed in an underground uranium mine during this time period.

(iii) If such records establish that the entity for which the claimant worked owned or operated predominantly open pit, strip or rim mines in the state and during the time periods indicated in the records, the claimant may be presumed to have been employed in a rim, strip, or open pit mine.

(5) If the claimant or eligible surviving beneficiary cannot provide under paragraph (b)(2) of this section, the time period the claimant was employed in each uranium mine, the time period will be determined in the following manner:

(i) If records of the Social Security Administration exist which indicate

the claimant's work history, the period of employment will be estimated by dividing the gross quarterly income by the average pay rate per hour for the claimant's occupation;

(ii) If Social Security records do not exist, but other records exist which indicate that the claimant was employed in a uranium mine on the date recorded in the record, but do not indicate the period of employment, then the following presumptions shall be applied:

(A) If the records indicate that the claimant worked at the same mine or for the same uranium mining company on two different dates at least 3 months apart but less than 12 months apart, the claimant will be presumed to have been employed at the mine or for the mining company for the entire 12 month period beginning on the earlier date.

(B) If the records indicate that the claimant worked at the same mine or for the same uranium mining company on two different dates at least 1 month apart but less than 6 months apart, the claimant will be presumed to have been employed at the mine or for the mining company for the entire 6 month period beginning on the earlier date;

(C) If the records indicate that the claimant worked at any mine or for a uranium mining company on any date within the designated time period, but the claimant is not entitled to any of the presumptions listed above, the claimant will be presumed to have been employed at the mine or for the mining company for a 6 month period, three months before and three months after the date indicated.

(c) The Unit may, for the purpose of verifying information submitted pursuant to this section, require the claimant or any eligible surviving beneficiary to provide an authorization to release any record identified in this section, in accordance with the provisions of § 79.52(c).

§ 79.34 Proof of working level month exposure to radiation.

(a) If one or more of the sources in § 79.33(a) contain a calculated total of Working Level Months (WLMs) of radiation for the claimant equal to or greater than the number of WLMs required for the claimant to qualify

under the appropriate provision of § 79.32(c), the number will be presumed to be correct and the claimant or eligible surviving beneficiary need not submit additional records.

(b) If the sources in § 79.33(a) do not contain a calculated total of WLMs or radiation for the claimant, or contain a calculated total that is less than the criterion set forth in the appropriate provision of § 79.32(c), a claimant or eligible surviving beneficiary may submit records from the sources listed below which reflect a calculated number of WLMs of radiation for periods of employment established under § 79.33(b). If the number of WLMs established under this subsection, plus the number established under paragraph (a) of this section is equal to or greater than the number of WLMs required for the claimant to qualify under the appropriate provision of § 79.32(c), the claimant or eligible surviving beneficiary need not submit additional records.

(1) Certified copies of records of regulatory agencies of the specified states, provided that the records indicate the mines at which the claimant was employed, the time period of the claimant's employment in each mine, the exposure level in each mine during the claimant's employment, and the calculations on which the claimant's WLMs are based, unless the calculation is obvious;

(2) Certified copies of records of the owner or operator of a uranium mine in the specified states with the same provisions as noted in paragraph (b)(1) of this section.

(c) When the sources referred to in paragraphs (a) and (b) of this section contain a calculated number of WLMs, but the number is insufficient to meet the appropriate criterion in § 79.32(c), additional WLMs may be determined for remaining periods of employment established under § 79.33 (a) and (b) in the manner set forth in paragraphs (d) through (h) of this section.

(d) To the extent that the sources referred to in paragraphs (a) and (b) of this section do not contain a calculated number of WLMs, but do contain annual exposure levels measured in Working Levels (WLs) for mines in which the claimant was employed, then the claimant's exposure to radiation